

ITEM 12
STAFF REPORT
CENTER FOR COLLABORATIVE POLICY
DRAFT ASSESSMENT REPORT:
REFORMING THE MANDATE REIMBURSEMENT PROCESS

Background

The existing mandate reimbursement process does not timely inform policymakers of the state's liability for mandated costs, nor does it timely reimburse local agencies and school districts for the costs they incur. Therefore, the members of the Commission on State Mandates (Commission) are seeking to streamline and reform the existing process. Chairperson Anne Sheehan contacted key officials and staff from the Administration, the Legislature, and local governments, and determined that there is significant interest in pursuing mandate reform this year.

Commission staff contracted with the Center for Collaborative Policy (Center), at California State University, Sacramento, to scope out issues that should be addressed in reforms, opportunities for agreement on reforms, and the potential for using a collaborative process to develop recommendations for consideration by the Legislature and Governor.

The Center conducted an assessment of the issues, interviewed over 40 persons that participate in the mandates process, and issued a draft report. Following is a summary of the draft report.

The Assessment Methodology

The Center carried out the following three-step assessment of the feasibility of using a collaborative process to develop recommendations for reforming California's mandate reimbursement process:

1. The Center reviewed written materials about the current mandate determination and reimbursement processes and about previous efforts and proposals for mandate reform. The Center also worked with Commission staff to identify organizations and individuals to be interviewed and to prepare an interview protocol. Chairperson Sheehan then sent a letter to the identified organizations seeking their participation in the interview. As a result, the Center received 100 percent cooperation.
2. The Center scheduled and carried out interviews of more than 40 individuals representing 25 organizations, departments, and offices.
3. The Center compiled and analyzed the data provided from the interviews. They used the data to determine what issues surfaced for which there is or is not general agreement, if there are issues likely to be amenable to a collaborative process, and if the interviewees are amenable to using a collaborative process. Based upon the analysis, the Center drafted a written draft report.

The draft report is accessible at the Commission's web site, and staff has scheduled a meeting for March 28, 2006, to allow interested parties to provide feedback regarding the draft report's findings and recommendations. Revisions will be made to the draft report following the Commission hearing based upon a review of all the additional information received during these meetings and a final report will be issued.

Reform Ideas

Interviewees provided numerous ideas for reforming the mandate determination and reimbursement processes. Following are some of those ideas:

Local Agencies

- Establish a mandate cost reimbursement committee that can review bills while they are proceeding through the legislative process.
- Establish a neutral body to review and pay reimbursement claims and eliminate the test claim process.
- Establish process where cost estimates are submitted within one year of enactment of a new mandate. Within a specified timeframe, settlement ensues between the state and local governments regarding the difference between the actual allowable expenses, and the amounts already paid out.

School Districts

- Recast the Commission to better reflect parties of interest.
- Require the Commission to establish the terms and rates of reimbursement, and to link the finding of a mandate with an accurate measure of its costs. Add a new unit to the Commission to undertake this process.
- Establish a new joint legislative committee to review mandates, and then transfer funding from an annual appropriation to the existing State Mandate Apportionment System.
- Refocus the audit process on the provision of the service, not the documentation of the costs incurred in providing the service.

Legislative Analyst's Office

- Streamline funding of education mandates by reimbursing all K-12 mandates with education mandates block grants.

Department of Finance

- Return to the basic principle of doing the right thing: "If you make us do it, you have to pay us, and if you don't pay us, we don't do it."
- Speed in determining mandate costs is more important than perfect accuracy. If local governments prevail in showing that the real cost is \$20 million, instead of \$1 million, then the state has to choose between funding at the higher level and suspending.
- The initial mandate determination could still be done by the Commission, but in less time and in a less legalistic manner.

- Enact a statute that defines the cost of a mandate as the cost negotiated between Department of Finance and local governments, and then endorsed by the Commission.

The Center's Findings and Recommendations

Generally, the Center found that there was a clear willingness among potential stakeholders to consider the suggestions and perspectives of all other stakeholders.

The Center found a few areas where there was no consensus among the interviewees, including: (1) changing the composition of the Commission, or (2) including education mandates and school districts in mandate reform discussions at this time. On the other hand, the Center found that there were several issues where there was general agreement among the interviewees, including:

1. The constitutional principle that if the state requires a local government to carry out a function, the state should pay for those new costs.
2. The information available to the Legislature for their deliberation on proposed new mandates could be improved significantly.
3. The mandate determination and reimbursement process should take place in a shorter period of time.
4. There are several practices, such as reconsideration of existing mandates, the SB 1033 process, and the length of time all parties take to review pending test claims that delay the determination of test claims.
5. Delay in reimbursing mandated costs is a critical issue.
6. The cost of a new program should be made clearer up front before bills are enacted.
7. The current parameters and guidelines system and the process for calculating estimated costs for mandate reimbursement should be shortened.
8. The State Controller's audits of reimbursement claims are controversial.

The Center concluded that the above issues could be considered using a collaborative process. The interviewees identified four factors that were critical to their participation. The Center concluded that using a collaborative process to consider recommendations for reform of the state mandates process is feasible if these critical factors are adequately addressed. The factors are:

1. The process should enjoy the support of the Legislature and participants should be assured that the Legislature would carefully consider any recommendations offered resulting from the process.
2. The Department of Finance should be engaged directly in the collaborative process.
3. The process should have the benefit of neutral facilitation to guide the deliberations and negotiations.
4. The process should have adequate time and resources available to adequately support the deliberations. In particular, many interviewees believed that the period between now and the time to introduce related legislation in early 2007 is most opportune.

If the Commission and the Legislature agree to use a collaborative process to pursue mandate reform, the Center makes the following suggestions:

1. In order for the Legislature to have time to consider the recommendations in the next legislative year, the date for the report should be no later than March 1, 2007.
2. The process should address both education and local agency mandates. Although this may make the process more complex, two subcommittees could be organized to focus on the respective areas and the recommendations brought back to the full group.
3. The collaboration should take as a starting point for discussion the ideas of the Department of Finance, and then expanded to look at additional ideas.
4. The focus should be entirely on the mandates process itself and not on the substantive content of any particular mandate. Reform discussions can and should be conducted without reference to the particular merits of individual mandates because they are policy questions for the Legislature to decide.
5. The collaborative process should start with convening and organization, and proceed through joint fact finding, negotiations, and implementation.

Reporting to the Legislature

The Senate Budget and Fiscal Review's Subcommittee 4 staff report is recommending that the Commission, DOF, and other interested parties report back to the Subcommittee on their recommendations for implementing any portions of the report by the Center for Collaborative Policy.

Staff Findings and Conclusions ¹

Overall, staff finds that the draft report supports the use of a collaborative process to pursue mandate reform. There are general areas and issues where it is apparent that there is consensus among potential stakeholders. There also seem to be areas where there is general misunderstanding between state agencies and local government on their views on the mandates process. As the draft report points out, using a collaborative process will give parties a better chance to communicate and understand all sides of an issue.

The Center concludes that using a collaborative process is feasible if it is supported by the Legislature, and the Legislature carefully considers any recommendations. Several legislators and legislative staff have expressed support for mandate reform and a willingness to participate in a collaborative process. In addition, legislative staff indicate that once recommendations are made, legislative hearings can be convened to consider the recommendations before legislation is introduced. Therefore, there are positive indications that the Legislature will support the process and will carefully consider recommendations.

However, the Center's draft report may not be clear regarding the Legislature's role in this process. Staff finds that the Center's final report should clarify that the Legislature's ideas for reform will be fully considered, that the Legislature and its staff are encouraged to participate in the collaborative meetings, and that the final report will be formally submitted to the Legislature for their review and approval.

¹ Based on feedback from the March 28, 2006 informal meeting of interested parties, staff may amend or revise its findings and conclusions.

The Center also concludes that the Department of Finance must be engaged directly in the collaborative process for it to be successful. Staff finds that there is clear evidence that the leadership of the Department of Finance supports this process and will assign staff to participate.

The Center concludes that the process should have adequate resources available to support the deliberations. The Commission is not currently budgeted to pay for an extensive collaborative process. However, Commission staff will work with Department of Finance and the Legislature to obtain this funding.

The Center makes the following suggestions if a collaborative process is used:

1. Final recommendations should be completed no later than March 1, 2007.

Staff disagrees. Final recommendations should be completed and submitted to the Legislature no later than December 2006, so legislative hearings can be conducted and legislation introduced in January 2007, at the beginning of the legislative session.

2. The process should address both education and local agency mandates.

Staff agrees. The process for making mandate determinations is the same for local agencies and school districts. Any new process for determining mandates should be the same for local agencies and school districts. However, funding local agency mandates and school district mandates should be deliberated separately, since they are funded differently.

The Center also suggested the following:

1. The collaboration should use the ideas of the Department of Finance as the starting point for discussion.
2. The focus should be entirely on the mandates process itself and not on the substantive content of any particular mandate.
3. The collaborative process should start with convening and organization, and proceed through joint fact finding, negotiations, and implementation.

While these suggestions may or may not have merit, staff finds that it is the role of the stakeholders, and not the Commission or its staff to determine these issues when the collaborative process begins.

Staff concludes that the Commission has the following options:

1. Adopt staff's findings and conclusions. Specifically:
 - Using a collaborative process is feasible.
 - Final recommendations should be completed and submitted to the Legislature no later than December 2006, so legislative hearings can be conducted and legislation introduced in January 2007, at the beginning of the legislative session.
 - The process should address both education and local agency mandates as it relates to mandate determinations. Funding mandates for local agencies and school districts should be deliberated separately.
 - Process issues like the focus of the deliberations or the use of any agency's ideas as a beginning point should be decided by the stakeholders.

2. Partially adopt staff's findings and conclusions. This means the Commission agrees that a collaborative process is feasible, but does not necessarily agree with staff's other conclusions. Instead the Commission makes the following changes:
 - Final recommendations should be completed and submitted to the Legislature no later than _____.
 - The process should address _____.
 - Process issues like the focus of the deliberations or the use of any agency's ideas as a beginning point should be decided by _____.
3. Reject staff's findings and conclusions. This means the Commission does not agree to proceed with a collaborative process, and will pursue other methods for completing mandate reform.

Staff Recommendation

Staff recommends that the Commission adopt Option 1. If the Commission adopts this option, staff will:

- Work with the Department of Finance and the Legislature to obtain funding for the process.
- Select and contract with a neutral facilitator to guide and manage the collaborative process.
- Work with Department of Finance, the Legislature, and other stakeholders to encourage their participation.
- Report to the Commission at each hearing on the progress of the collaborative process.

Staff also recommends that the Center's final report be amended to clarify that the Legislature's ideas for reform will be fully considered, that the Legislature and its staff are encouraged to participate in the collaborative meetings, and that the final report will be formally submitted to the Legislature for their review and approval.

Regardless of what action the Commission takes, staff will report to the Legislature, including the Senate Budget and Fiscal Review Committee of any actions taken to implement the Center's Report.